

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

United States of America	)	
	)	Cr. No. 8:06-1264-HMH
vs.	)	
	)	
James Albert Jones,	)	<b>OPINION AND ORDER</b>
	)	
Movant.	)	

This matter is before the court on James Albert Jones’s (“Jones”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. In his motion, Jones alleges that his attorney was constitutionally ineffective for failing to file an appeal as requested.

(§ 2255 Mot. 4.)

An attorney’s failure to file a direct appeal after a request from a client constitutes ineffective assistance of counsel. See United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). When a prisoner alleges that his attorney failed to file an appeal as requested, the court has the authority to vacate the sentence and immediately reimpose and reinstate the movant’s judgment of conviction to allow the prisoner to appeal. See id. Therefore, the court hereby vacates Jones’s sentence of conviction and immediately reinstates and reimposes Jones’s conviction.

It is therefore

**ORDERED** that Jones's § 2255 motion is granted, his sentence is vacated, and his judgment of conviction is immediately reimposed and reinstated with the date of imposition of judgment being the filing date of this order.

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
United States District Judge

Greenville, South Carolina  
June 30, 2008

**NOTICE OF RIGHT TO APPEAL REIMPOSED JUDGMENT OF CONVICTION**

The movant is hereby notified that he has **TEN (10)** days from the filing date of this order in which to file a notice of intent to appeal his judgment of conviction, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline will waive the right to appeal.

The notice immediately below relates only to movant's right to appeal this order and should not be confused with the ten-day period in which to file a notice of intent to appeal the judgment of conviction.

**NOTICE OF RIGHT TO APPEAL**

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.